

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications)	
Act of 1996)	
)	
Developing a Unified Inter-carrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Inter-carrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36

To: The Commission

COMMENTS OF COMMNET WIRELESS, LLC

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SUMMARY

Commnet is an experienced rural wireless carrier, specializing in offering wireless service to the most remote areas of the continental United States, often providing either the only wireless service, or the only wireless service to users with one or the other digital technology. Commnet handles millions of minutes of traffic, and millions of SMS messages annually, throughout its services areas in rural America, as well as providing critical emergency access via 911 annually for many thousands, acting as a “carriers’ carrier.” Commnet has done all this without receiving a single penny of ETC high-cost subsidies to date, although frequently Commnet has been forced to compete with other wireless carriers that do receive such subsidies.

Commnet is ready, willing and able to expeditiously begin providing direct retail services, including broadband services, in its service areas, if it can have access to some level of support funding. Commnet already has begun the laborious process of obtaining state-by-state ETC designation, although Commnet has not yet had an opportunity to launch or establish a customer base.

Commnet supports the continued use of the state-by-state-cap approach to transitional wireless ETC funding, as established by the *Interim Cap Order*¹ and opposes the proposal to replace the current state-by-state cap methodology with a carrier-by-carrier methodology during the transition period. Such a change is not required by any statute, and is contrary to public policy, because it would hamstring the efforts of Commnet or other potential new wireless entrants to establish themselves as ETCs during the transition and to test their business models in

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, 23 FCC Rcd 8384, 8846 (2008) (“*Interim Cap Order*”).

preparation for reverse auction bidding. The Commission's duty is to protect *competition*, not individual competitors.

Commnet vigorously opposes any rule which would have the effect of shutting qualified carriers out of the bidding in reverse auctions. Either the Commission must change the current, onerous method of designating ETCs, or the Commission must open the bidding in reverse auctions to carriers which are not already ETCs. The proposal in the *FNPRM* to artificially limit the universe of potential bidders to those carriers which have already been designated after the drawn-out designation hearing process makes no sense whatsoever, is anti-competitive, and is inconsistent with the Communications Act.

Whether a particular carrier is capable of offering high-quality service -- including broadband service as well as voice service -- to an area has no connection to whether that carrier sought and obtained non-cost-based subsidies in the past for provision of basic voice service. The relevant criteria are whether a carrier can physically serve the bulk of an area (*i.e.*, has the right to build landline facilities or holds spectrum authority),² has experience in operating rural networks, and has the financial wherewithal to keep the promises made in its auction application. None of those criteria are connected to whether that carrier obtained an ETC designation under the old regulatory regime.

Finally, Commnet supports the Commission's proposal to make a binding commitment to offer broadband service a pre-condition to any carrier receiving another dime in high-cost support. The Commission's rules have consistently lagged behind the pace of technological advance. It is time to recognize that broadband service is already a basic, not an enhanced service for most Americans, and that any rational support program must include such service.

² A carrier may lawfully cover a portion of a service area via resale.

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To: The Commission

COMMENTS OF COMMNET WIRELESS, LLC

Commnet Wireless, LLC (“Commnet”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, hereby submits its Comments in response to the *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-262, released November 5, 2008 (“*FNPRM*”) in the captioned consolidated proceedings. As discussed in greater detail below, Commnet fully supports the Commission’s proposal to condition all future support funding upon a carrier’s commitment to provide broadband service. However, Commnet opposes any rule which would limit wireless ETC¹ high-

¹ “ETC” stands for “eligible telecommunications carrier.”

cost subsidies on a carrier-by-carrier basis, instead of the current state-by-state basis, and also opposes any rule which would limit the eligibility of any wireless carrier to participate in reverse ETC auctions.

BACKGROUND OF COMMNET AS A RURAL CARRIER; ITS INTEREST IN THE PROCEEDING

To understand Commnet's interest in this proceeding, it is helpful to explain the nature of Commnet's business and its evolution over time. Commnet began as a small wireless carrier, specializing in serving remote, sparsely populated areas which the major wireless carriers had chosen not to serve. Indeed, during its initial phase of operations, Commnet's licenses were all unserved area cellular licenses, which, by definition, represent areas which the initial cellular licensee decided were too remote to bother serving. Commnet found that these areas had substantial demand, albeit often largely from incoming roamers.

After the change in the Commission's rules in February, 2003, to permit a "carriers' carrier" wholesale business model, Commnet moved to fulfill that model, and grew rapidly to serve more and more rural and remote areas, bringing high-quality wireless service to these areas.² Commnet now operates over 260 base stations nationwide, in both the cellular and broadband PCS bands. Of these, 58 base stations provide the *only* wireless service available in their coverage areas. Another 92 base stations provide the *only* GSM voice or data service, and another seven cell sites provide

² The national wireless carriers, such as AT&T, Verizon Wireless and T-Mobile, all have very strict and detailed quality requirements for their preferred roaming partners. Essentially, those carriers seek to ensure that each preferred roaming partner meet the same quality standards which the carrier sets for its own in-house network. Commnet consistently meets these high standards, despite the fact that it operates only in more sparsely populated rural areas.

the *only* CDMA voice or data service. In all these areas, but for Commnet's service, either GSM or CDMA (or, for the 58 base stations, both) users would have no wireless service whatsoever, including no access to 911 Emergency services.

Commnet now handles over 350 million minutes of voice traffic per year, as well as over 300 million SMS messages. Commnet handles approximately 28,000 911 calls annually. Commnet does all this without one penny of ETC subsidies, because ETC subsidies are available only on a per-subscriber basis, and as a carriers' carrier, Commnet had no subscribers.

Commnet desires to stay on the leading edge in bringing the benefits of the telecom revolution to rural America. As the *FNPRM* notes, the time is ripe for rural Americans to receive high-speed Internet services, and Commnet wants to apply all of its rural-area experience to expedite that process. Commnet is already examining various business plan models with a view toward offering broadband services in its various service areas in the near future. With its extensive experience and expertise in building high-quality wireless networks specifically designed to serve remote and rural areas, Commnet is well-positioned to expedite the introduction of high-speed broadband services and to bid in any reverse auction the Commission may conduct with respect to ETC subsidies.

A growing portion of Commnet's revenues are coming from local residents within Commnet's service area who have established billing addresses in areas served by a roaming partner (for example, at a place of work), but who are "roaming" when they travel back to their home. There appear to be other residents who would like to subscribe, if Commnet could establish a local retail store and personnel. However, the

cost of doing so is prohibitive in these areas without some sort of subsidy. Accordingly, Commnet has begun the process of seeking ETC certification in some of its service areas, with a view to performing all of the functions which an ETC performs, including its own retail service locations.

Commnet just recently received ETC status in a portion of its Colorado service area, and is completing applications to the New Mexico and Nevada public utility commissions seeking ETC status in those states. However, due to opposition from certain landline carriers, the regulatory process in Colorado was long and arduous, and the same may be true in the other states as well, even though, under the Commission's interim cap on competitive ETC funding, certification of Commnet as an ETC would not increase the overall wireless ETC subsidies and would not adversely affect any landline carrier.³

Commnet is now in the process of establishing a retail presence and fulfilling all of the other statutory obligations of an ETC in Colorado, but has no subscribers there as yet. Nor is Commnet yet certified in any other state. If ETC subsidies are capped as a percentage of a multiple of ETC subsidies received for either December, 2008 or an earlier time frame, as proposed in the *FNPRM*, then Commnet likely will be barred from receiving ETC high-cost subsidies during any transition period, because twelve times zero is still zero.

³ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, 23 FCC Rcd 8384, 8846 (2008) ("Interim Cap Order").

The *FNPRM*'s proposals limiting eligibility to (a) receive interim ETC subsidies during the transition to a new regulatory regime, and (b) participate in future reverse auctions, would, if implemented, materially harm Commnet and its current and future operations. Such proposals are unnecessary to protect the Universal Service Fund, and are contrary to the public interest.

I. Interim High-Cost Funding Should Follow the Interim Cap Formula

In the *Interim Cap Order*, *supra*, the Commission froze, with limited exceptions for Alaska Native and tribal lands, the overall amount of competitive (*i.e.*, wireless) ETC high-cost subsidies, but did so on a state-by-state basis, rather than on a carrier-by-carrier basis. Indeed, in the *Interim Cap Order*, Appendix B, 23 FCC Rcd at 8857-8936, the Commission designated a number of additional wireless ETCs. The Commission found it in the public interest to make these designations, thereby expanding the geographic areas which would receive the benefits of subsidized wireless service, even though doing so would reduce the overall subsidy levels to pre-existing wireless ETCs.

The rationale for the Commission's decision therein is obvious. Wireless ETCs' costs of service are not as high as those of landline carriers – if they were, wireless carriers would submit their own cost showings, rather than demanding equal per-line treatment with the landline carriers. Therefore, even with a reduced high-cost subsidy, a wireless ETC will still find it financially worthwhile to provide ETC services. Allowing new wireless ETCs to offer service will extend the benefits of wireless to more rural Americans without harming the residents of areas already receiving those benefits.

Notwithstanding its own decision in the *Interim Cap Order*, the *FNPRM* now proposes to cap wireless ETC high-cost funding using a different methodology.

Specifically, the *FNPRM* proposes to look at how much each wireless ETC received in high-cost subsidies for the period December, 2008 (or, alternatively, December, 2007), and to cap that carrier's future annual high-cost subsidy at a percentage of twelve times that monthly amount. Any wireless carrier wishing to offer broadband service and to participate in reverse auctions, but which had not initiated ETC service in time to receive subsidies during December, 2008 (or, alternatively, December, 2007), would be shut out of transitional funding. The *FNPRM* offers no reasoning to explain why the Commission would discard the state-by-state approach now in place under the *Interim Cap Order*, and replace it with this alternative transition methodology.

The rationale underlying Appendix B of the *Interim Cap Order* continues to make sense today. If the Commission desires to transition down the overall amount of wireless ETC high-cost subsidies via a stepped process (*i.e.*, year 2009 = 80% of year 2008, year 2010 = 60% of year 2008, etc.), the rational way to do so is to cap the state-by-state high-cost funding year-by-year, not to switch in midstream from the current state-by-state cap to a carrier-by-carrier cap. Such a switch would preclude funding to new wireless ETC entrants such as Commnet, precisely at the time when the Commission should be encouraging such new entrants so as to expand the field of participants in reverse auctions.

To subsidize some but not all wireless ETCs during the transition to the new regulatory regime would skew the auction process itself, by giving the pre-existing wireless ETCs a huge advantage over potential newcomers. Newcomers would not be able to initiate services prior to an auction without some subsidies. Where a newcomer has initiated service, even at a modest level, it will have a better idea of its costs of being

the carrier of the last resort, and thus will be able to more precisely calculate how much it can feasibly bid at the reverse auction. Absent the ability to engage in pre-auction ETC services in a given area, the carrier will have less information than other bidders, and will necessarily be less aggressive in its bidding, to the detriment of the public.

Nor is there any administrative cost to using a state-by-state transition approach, rather than a carrier-by-carrier transition approach. The Administrator already is administering a state-by-state approach, and the only change which would need to be made is to adjust the baseline cap amount each year. That would be no more administratively burdensome than it would be to throw out the existing system and replace it with a carrier-by-carrier approach.

Finally, using a carrier-by-carrier approach would chill the normal activities of the secondary markets in rural areas. Under the interim cap system already in place, the owner of a rural wireless ETC is able to sell its wireless system, and the buyer is able to buy the system, obtain its own ETC designation, and continue serving the same subscribers receiving the same subsidies (or proportion thereof) which the seller would have received in the absence of a sale, because the buyer will have the same number of subscribers as the seller had, and therefore under the state-by-state methodology has the same entitlement. In contrast, under the *FNPRM*'s carrier-by-carrier approach, such a buyer of a rural wireless ETC would, at closing, lose the entirety of the high-cost funding formerly received by the seller, even during the remainder of the transition period, because the buyer had not had its own subsidy customers during the month of December, 2008.

There is no public interest reason to preclude a buyer in such circumstances from stepping into the shoes of the seller and continuing to receive whatever transitional subsidies the seller would have received in the absence of a sale. Indeed, by rendering rural wireless ETCs less liquid, the Commission will be materially reducing the value of such ETCs and hindering their ability to access the capital markets, even if they are not currently considering a sale of the system.⁴ The Commission should avoid such a result where, as here, there is no countervailing public benefit from implementing such a change.

II. Restricting Eligibility for Participation in Reverse Auctions Is Contrary to the Public Interest

Obtaining designation as an ETC is a laborious process, subject to bad faith and anti-competitive protests from incumbent landline and wireless carriers. Although the Commission assumes jurisdiction where the state government has abdicated such jurisdiction, the Commission has many other competing priorities, and therefore ETC applications may be pending before the Commission for years at a time. Similarly, in those states which have assumed jurisdiction to designate ETCs, the application process can take months or years.

One can argue whether this laborious designation process constituted sound public policy under the prior regulatory regime, where there was a presumption that

⁴ For a large wireless ETC, such as an Alltel, one could structure a transaction so as to purchase equity in a parent company, and leave the same subsidiary entity as the FCC licensee/ETC designee. However, such a transaction structure is not always feasible in the case of smaller, more rural ETCs serving areas more remote than those served by the Alltels and other cream-skimmers of the world. Particularly in the case of non-profit cooperatives or local/tribal-government-owned wireless ETCs (who may have a greater current need for liquidity or access to capital), such exotic transaction structures may be prohibited by state law.

wireless ETCs would take customers away from landline ETCs, as opposed to providing complementary service. However, as noted by the Commission in the *Interim Cap Order, supra*, 23 FCC Rcd at 8843, and again in the *FNPRM*, at ¶ 32, wireless ETCs are almost always providing the same residence with a wireless phone to complement the existing landline phone. Stated simply, when the wireless ETC gains a customer, the landline ETC does not lose that customer or the subsidies that accompany the customer.

Given this factual finding, which the Commission has now made twice and which, to Commnet's knowledge, no one disputes, there is no public policy reason for the Commission to prevent any wireless carrier – whether or not already designated as an ETC – from competing in a reverse auction. Rather, any wireless carrier which can document that it covers the bulk of a given geographic area via either license or spectrum lease⁵ should be entitled to ETC designation for that area upon request, as a sort of notification filing in ULS, if that wireless carrier prevails in a reverse auction. Such a designation will not enable a new wireless ETC to receive any high-cost ETC funding in the absence of its winning a reverse auction, but it would enable the carrier to participate in the auction, to the benefit of the public.

It makes no sense to propose, as the *FNPRM* does, at Appendix A, ¶ 49, Appendix C, ¶ 49, that only existing ETCs be eligible to bid in reverse auctions. If the ETC designation process remains as cumbersome as it has been to date, incumbent ETCs, landline and wireless, will be able to keep efficient newcomers such as Commnet from competing in the reverse auctions, even where Commnet could perform better than the

⁵ A carrier may lawfully cover a portion of a service area via resale.

incumbents, at a lower subsidy rate. Such a result is anti-competitive, and is tantamount to throwing away the user fees collected from urban subscribers.

Long ago, the Congress pre-empted state entry regulation for CMRS, precisely because Congress feared that otherwise, state regulators would engage in anti-competitive behavior and protect favored incumbent carriers.⁶ To require that potential reverse auction bidders, otherwise capable of performing all of the required functions and financially qualified, be subject to ineligibility based upon the whims of state entry regulators is contrary to the pro-competitive thrust of the Communications Act, and undermines the policies embodied in Section 332(c)(3) of the Act.

The key for eligibility to participate in a reverse auction should be the bidder's written commitment to bringing not only voice service but also high-speed broadband services, and its written commitment to be the carrier of last resort in the area. Once a would-be bidder has established it meets those two criteria, there is no rational basis for denying it the right to bid, just because the Commission or some state PUC is slow-rolling an application for ETC designation.

III. The Commission Should Require All ETCs to Commit to Offering Broadband Service throughout the ETC Area as a Condition to Continued Eligibility

Commnet fully supports the Commission's tentative conclusion to condition all future eligibility to receive high-cost support upon a carrier's commitment to offer broadband service within its ETC geographic area. This should be true for *all* ETCs, whether landline or wireless. In the 21st century, there is no good reason to have a support program without obligating all support recipients to offer those 21st century

⁶ See 47 U.S.C. § 332(c)(3).

services which are treated as basic by urban America. The majority of Americans view broadband service as a basic, not an enhanced service. If other carriers are reluctant to make the broadband commitments called for in the *FNPRM*, Commnet stands ready to do so where it holds spectrum, so long as Commnet is eligible for some level of high-cost support to assist it in launching broadband service expeditiously.

CONCLUSION

Commnet is an experienced rural wireless carrier, specializing in offering wireless service to the most remote areas of the continental United States, often providing either the only wireless service, or the only wireless service to users with one or the other digital technology. Commnet handles millions of minutes of traffic, and millions of SMS messages annually, throughout its services areas in rural America, as well as providing critical emergency access via 911 annually for many thousands, acting as a “carriers’ carrier.” Commnet has done all this without receiving a single penny of ETC high-cost subsidies to date, although frequently Commnet has been forced to compete with other wireless carriers that do receive such subsidies.

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period. Such a change is not required by any statute, and is contrary to public policy, because it would hamstring the efforts of Commnet or other potential new wireless entrants to establish themselves as ETCs during the transition and to test their business models in preparation for reverse auction bidding.

Commnet vigorously opposes any rule which would have the effect of shutting qualified carriers out of the bidding in reverse auctions. Either the Commission must change the current, onerous method of designating ETCs, or the Commission must open the bidding in reverse auctions to carriers which are not already ETCs. The proposal in the *FNPRM* to artificially limit the universe of potential bidders to those carriers which have already been designated after the drawn-out designation hearing process makes no sense whatsoever, is anti-competitive, and is inconsistent with the Communications Act.

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Finally, Commnet supports the Commission's proposal to make a binding commitment to offer broadband service a pre-condition to any carrier receiving another dime in high-cost support. The Commission's rules have consistently lagged behind the pace of technological advance. It is time to recognize that broadband service is already a

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Respectfully submitted,
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